

**ISSUES MATRIX**  
**SCC/AMERITECH ILLINOIS**  
**DOCKET NO. 00-0769**

ISSUE NO.	ISSUE PRESENTED	SCC POSITION	AMERITECH POSITION
R. Force Majeure	Whether SCC should be required to pay for services during a Force Majeure Event.	Under the Agreement, neither Party is responsible for any delays or failures resulting from acts of nature, acts of military authority, natural disasters, etc. ("Force Majeure Event"). Yet, SBC's proposed language requires SCC to continue to pay for services even during a Force Majeure event when SCC would not receive services from SBC. Neither Party should be required to make payments for services they do not receive. SBC's language is unreasonable, discriminatory, and anticompetitive, and it should be deleted.	The issue is whether the underscored language in the following passage from GT&C section 33 should be retained or, as SCC contends, excluded: "No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, . . . nuclear accidents, [etc.]." SCC objects to the underscored language on the ground that it would require SCC to pay for services it does not receive. SCC is wrong. Obviously, SCC is not obliged to pay Ameritech Illinois for services that Ameritech Illinois is unable to provide because of a force majeure event – and nothing in section 33 suggests otherwise. All the underscored language provides is that <i>if</i> a party has an obligation to make money payments under the agreement, that obligation is not excused by a force majeure event. In a situation where Ameritech Illinois is unable to provide a service to SCC under the agreement because of, for example, a nuclear accident, then SCC has no duty to pay for that service in the first instance, and the underscored language does not come into play. The underscored language simply means that where SCC (or Ameritech Illinois) has a duty to pay the other party money under the agreement, that duty cannot be excused by a force majeure event. That provision is eminently reasonable, and should be retained.
S. Network Maintenance and Management	Whether network interference protection obligations should be reciprocal.	SBC's original language imposed network interference protection obligations on both Parties. SCC agreed to this reciprocal language on June 29, 2000. Three months later, on September 29, 2000, SBC unilaterally modified its own language, creating non-mutual obligations between the Parties. This change is completely unreasonable. SCC is entitled to the same interconnection standards that are available to any other CLEC. SBC's original language was reciprocal, SCC agreed to that language, and SBC should not be permitted to change this language unilaterally to create discriminatory obligations.	<p>SCC's principal argument on this issue appears to be that Ameritech Illinois improperly changed positions during the parties' pre-arbitration negotiations. That position goes nowhere, even assuming, for the sake of argument, the accuracy of SCC's account of the pertinent negotiating history at pages 53-54 of the Petition. There is no prohibition against a party changing positions during a negotiation.</p> <p>On the merits, this is another instance (like Issue 1.N) where SCC is requesting what appears on the surface to be reciprocity, but which in fact is – given the nature of SCC's business – meaningless.</p>

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T. Customer inquires	Whether SBC may require SCC to agree that, upon an end user's request, SBC may provide services similar to those by SCC directly to the end user.	<p>SCC deleted language by SBC that allows SBC to provide services similar to those provided by SCC, upon request of an end user. SBC's proposed language is inconsistent with § 5.10 of the same Agreement, which states that "SCC shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date, termination date of this Agreement."</p> <p>The proposed language creates an inappropriate, anti-competitive incentive to SBC either to terminate its agreement with SCC, or to interrupt SCC's service, once SCC has developed a lucrative customer base. Encouraging such perverse, anticompetitive incentives runs counter to FCC policy. Indeed, the FCC indicated that it "would find it unacceptable, and potentially discriminatory under section 201 or a violation of section 251 obligations, . . . , for the incumbent to cause or require any interruption of the competitive LEC's service in order to execute such a loop access status change."</p>	SCC's mini-diatribes about competition misses the point entirely. When the Commission looks at GT&C section 39.4, it will see that the provision is <i>pro</i> -competitive, not anti-competitive.
U. In-Region Most Favored Nations	Whether SBC should have an unlimited amount of time to implement interconnection arrangements or unbundled network elements ported from another SBC-owned ILEC state.	<p>SBC has acknowledged its obligations under the SBC/Ameritech Merger Conditions, but SCC proposes the addition of the following underlined language:</p> <p style="padding-left: 40px;">The Parties acknowledge and agree that it may require additional time to implement an interconnection arrangement or UNE ported from one SBC-owned ILEC state to another SBC-owned ILEC state pursuant to Paragraph 43 of the SBC/Ameritech Merger Conditions. Thus, when a CLEC exercises its option to adopt an interconnection arrangement or UNE in accordance with Paragraph 43</p>	Ameritech Illinois will agree to the language proposed by SCC so long as the following or similar additional language is included: "within the state to which such interconnection or UNE is being ported; and provided that this obligation ends October 8, 2002." Ameritech Illinois believes the parties should be able to settle this issue on that basis.

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		<p>of the SBC/Ameritech Merger Conditions, the Parties shall meet within thirty (30) calendar days of state commission approval of the interconnection agreement or amendment containing such interconnection arrangement and/or UNE to agree upon an implementation schedule for such interconnection - arrangement and/or UNE, <u>but under no circumstances will the interval for the provision of such interconnection arrangement or UNE exceed that employed when SBC provides such arrangements or services to itself or to others.</u></p> <p>This language is necessary to prevent SBC from delaying the implementation of an interconnection agreement under the pretense of needing additional time to port the arrangement.</p>	
2. APPENDIX 911			
2A. Trunk Terminations			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2 B. Tariffs	Whether SCC should be required to commit to pay rates contained in unspecified tariffs.	The rates, terms and conditions of the services, arrangements, and facilities to be provided under the interconnection agreement must be set forth in the Agreement. Vague references to unspecified tariffs are unacceptable. Pursuant to §§ 251(c)(2), (3) and 252(d)(1), SBC is required to provide pricing for interconnection and unbundled network elements that is just, reasonable, and nondiscriminatory. SCC, therefore, struck SBC's references to applicable tariffs and proposed that all pricing be specified in an appendix to the Agreement.	To the extent that Ameritech Illinois understands the nature of the products and services that SCC anticipates purchasing from Ameritech Illinois (the "Services" for purposes of the Response on this Issue), Ameritech Illinois states as follows: Some of the Services are sold pursuant to tariff. Although the tariffs are publicly available, Ameritech Illinois will provide them to SCC forthwith, so that there will no question of SCC committing to "pay rates contained in unspecified tariffs." Some of the Services are not yet independently priced, but instead are priced only as elements of bundled services sold at retail. Prices for those services will be made available to SCC as soon as they are available. To the extent that SCC seeks to purchase Services the prices of which are not governed by the 1996 Act, the prices of those Services are not subject to arbitration in this proceeding.

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2 C. Common Channel Signaling System 7			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. D E911 Service Provider			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. E. Network Connection, Facilities, and Trunking			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. F. Provision of A Links			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2 G. Geographic Area			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2 H. ALI Node Connectivity			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. I. Facilities and Trunking			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2 J. Database Management			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. J1 ALI Storage			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. J2 End Users Updates			It is Ameritech Illinois' understanding that the parties have resolved this issue.

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2. J3 Inputting and Updating of End User 911 Records			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. J4 Database Management Responsibilities			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. J5 Testing			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. K. Cell Routing			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. L Separate 911 Trunks			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. M Interim Number Portability			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. N Responsibilities of Both Parties			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. O Methods and Practices			It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. P Contingency			
2. P1 Completion of Exhibit I	Whether SCC's customers must complete SBC's Exhibit I.	SBC requires interconnecting CLECs to provide the information contained in Exhibit I in order to assign default emergency service numbers ("ESNs") to incoming trunk groups and to configure FRDBMS access profiles to include all exchanges served for MSAG access and updates. SCC's 9-1-1 Safety Nets services alleviate SBC's need to collect this	It is Ameritech Illinois' understanding that the parties have resolved this issue.

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		information regarding each of SCC's customers. SCC's customers will not access SBC's network directly; rather, they will access SCC's network, which will directly connect with SBC's network. Thus, SBC need not concern itself with determining default ESNs for SCC's customers. Likewise, because SCC will perform the MSAG validation functions, SBC need not concern itself with validating MSAGs for SCC's customers. While it may be necessary for SCC to complete an Exhibit I to provide SBC with default routing information and SCC's database profile, it is unreasonable and beyond the scope of this Agreement to require each of its customers to provide an Exhibit I.	
2. P2 Revisions to Exhibit 1	Whether anticipated revisions by SBC concerning references to Exhibit 1, CLEC Serving Area Description and E911 Interconnection Details will be acceptable to SCC.	SCC modified this section to reflect appropriately the names of the Parties and other changes to terms, all of which were agreed to by SBC.	It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. Q Basis of Compensation	Whether SBC will accept SCC's proposed modifications referencing when charges for services shall begin to apply.	SCC modified SBC's proposed language to clarify that charges for SBC's services will begin to accrue when live traffic is passed, not simply when SBC's services are activated.	It is Ameritech Illinois' understanding that the parties have resolved this issue.
2. R Liability	Whether SBC will agree to delete all sections addressing liability and indemnity in Appendix 911.	SCC deleted all sections of Appendix 911 addressing liability because liability and indemnity issues are covered in provisions of SBC's GT&Cs, where such provisions are appropriately placed. Moreover, the liability and indemnity provisions in Appendix 911 are inconsistent with the liability and indemnity provisions included in SBC's GT&C section of its template interconnection agreement.	It is Ameritech Illinois' understanding that the parties have resolved this issue.
3. RECIPROCAL COMPENSATION	Whether the traffic between SCC and SBC should be subject to reciprocal compensation.	SCC should not be subject to reciprocal compensation for the termination of emergency calls into SBC's network. Such calls will pass from	SCC contends it should not be required to pay reciprocal compensation on traffic it hands off to Ameritech Illinois because such traffic is one-way traffic and Ameritech Illinois' sister company in Texas, SWBT, has argued that reciprocal compensation should not apply to ISP traffic or to paging traffic because both are one-way.

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		<p>SCC's network to SBC's network and terminate at SBC's Selective Routing Tandems for routing to the appropriate PSAP. Thus, these calls are identical to emergency calls terminated by CLECs into SBC's network. SBC typically does not charge CLECs reciprocal compensation for terminating such traffic. SBC's attempt to treat SCC differently is unreasonable, discriminatory, and anti-competitive.</p> <p>Moreover, all of the traffic to be exchanged between SCC and SBC under this Agreement is one-way traffic originating on SCC's network and terminating at SBC's Selective Routing Tandems. SBC has argued at both the state and federal levels that one-way traffic should not be subject to reciprocal compensation. Before this Commission, SBC argued that termination of ISP traffic should not be subject to reciprocal compensation because such traffic is inherently one-way. Before the FCC, SBC argued that one-way traffic terminating on paging networks should not be subject to reciprocal compensation because such traffic is not "reciprocal" in nature. The Commission should heed SBC's arguments and determine that SCC's emergency call traffic is not subject to reciprocal compensation. SBC cannot have it both ways.</p>	<p>(SCC says SBC made that argument, but it means SWBT.) SCC's contention fails. Under current law, reciprocal compensation applies both to ISP traffic and to paging traffic. <b>[I have a question in to Keith on this]</b> Thus, to the extent that SCC's analogizing of its traffic to those types of traffic is accurate, reciprocal compensation must apply to SCC's traffic as well.</p> <p>Apart from that, the answer to the question whether reciprocal compensation applies to SCC's traffic is to be found in section 251(b)(5) of the 1996 Act and the FCC's implementing regulations as they apply to that traffic.</p>
<b>4. NETWORK INTERCONNECTION METHODS</b>			
4. A Physical Interconnection	Whether SCC should have an affirmative obligation to interconnect to SBC's network at multiple points within a LATA ("Local Access Transport Area").	SBC's proposed language would impose an affirmative obligation upon SCC to interconnect at multiple points within a given LATA. SBC's proposed language requires SCC to interconnect "in each local calling area" or "at all Tandems in a LATA." This requirement inconsistent with the FTA and decisions of the FCC. SCC's business plan necessitates that it interconnect with SBC's network at each of SBC's Selective Routing Tandems in order to provide its services. SCC has no need to	<p>POIs are the points where a CLEC physically links its network with the ILEC's network for the mutual exchange of traffic. Ameritech Illinois maintains that SCC should establish POIs at each tandem when a LATA is large enough to have multiple tandems. Ameritech Illinois' position accords with basic network design principles and is designed to ensure efficient and reliable use of the public switched network. SCC's proposal does just the opposite, as it would not only threaten premature tandem exhaust, but would reduce the efficiency – and reliability – of the public switched network. Moreover, in large LATAs, carriers incur significant costs for transporting calls over great distances. Transport costs are mileage sensitive, and a mileage component of transport is included in toll charges for calls terminating outside the local exchange area.</p> <p>SCC's position ignores the fact that calls within a single LATA may be local or toll. If SCC were allowed to</p>

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		<p>interconnect at every SBC tandem or in each local calling area and SBC should not be permitted to impose unilaterally its legacy network architecture on SCC by requiring it to interconnect at multiple tandems and/or end offices within a LATA.</p> <p>The Act requires ILECs to interconnect their networks with the facilities and equipment of any requesting telecommunications carrier. Toward that end, the Act allows carriers to interconnect at any technically feasible point on the ILEC network and mandates that the interconnection provided be "at least equal in quality" to the level of service the ILEC provides for itself, subsidiaries, affiliates, or any other party to which it provides interconnection. The FCC has interpreted the FTA to mandate that the requesting carrier, not the incumbent LEC, has the right to select the POI at which to exchange traffic.</p> <p>SBC's interconnection requirements clearly contradict the FCC's Local Competition Order, which allows the competitor to decide where interconnection will take place. SCC, not SBC, has the right to select the POI.</p> <p>In addition, there is simply no reason for SCC, an aggregator and transporter of traditional and non-traditional emergency calls, to interconnect with SBC anywhere but at its Selective Routing Tandems. It may well be that because SCC must interconnect at all of SBC's Selective Routing Tandems, and because all of SBC's calling areas might have a Selective Routing Tandem, SCC would ultimately interconnect "in each local calling area" in SBC's service territory. SBC, however, has not provided SCC with requested network information to determine where each of SBC's Selective Routing</p>	<p>establish only single POI per LATA, it could easily avoid transport charges. In such circumstances, it is Ameritech Illinois, not SCC, that would be forced to bear the costs of transporting the call to SCC's nearest POI outside the originating caller's local exchange area. For instance, in the Chicago LATA, tandems are on average 31 miles apart from each other. The establishment of a POI at each tandem in a LATA dramatically decreases the distances that calls have to be transported within the LATA, and thus dramatically reduces costs.</p> <p>If the Commission adopts SCC's position it would create serious network architecture problems. If CLECs are allowed a single POI in each multiple tandem LATA, CLECs would likely choose to interconnect at the tandems in the most highly populated areas that are already experiencing high traffic rates. Concentrating POIs at these few "choke" points would further tax overburdened urban areas resulting in premature tandem exhaust. Thus, SCC is just plain wrong in its contention that there is no reason for SCC to interconnect with Ameritech Illinois anywhere, but at its selective tandems.</p>



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		Tandems are located, and SBC's language mandating such multiple POIs violates existing law.	
4. B Network Architecture			It is Ameritech Illinois' understanding that the parties have resolved this issue.
4. C Further Network Architecture Negotiations	Whether the Parties' Agreement should leave to future negotiations the details of how the Parties will interconnect their networks.	<p>It is unnecessary for the Parties' interconnection agreement to provide for further network architecture negotiations after the Agreement is executed. SBC's interconnection template requires the Parties to enter into further negotiations concerning network architecture once SCC submits an interconnection request, even though the Parties would already have an interconnection agreement in place. The language provides:</p> <p style="padding-left: 40px;">Upon receipt of CLEC's notice to interconnect, the Parties shall schedule a meeting to negotiate and mutually agree on the network architecture (including trunking) to be documented as discussed in Section 2.1. The Interconnection activation date for an Interconnect shall be established based on then-existing force and load, the scope and complexity of the requested Interconnection and other relevant factors.</p> <p>SCC seeks to "negotiate and mutually agree on the network architecture" within the context of these interconnection negotiations, not during negotiations at some later date triggered by the Parties' Agreement. Negotiating an interconnection agreement is a sufficiently arduous task without unnecessarily imposing further negotiations after an agreement has been reached. Indeed, SBC's recalcitrance during the Parties negotiations casts serious doubt as to whether network architecture negotiations could be concluded successfully at all,</p>	The language that SCC seeks to delete from section 4.2 of the NIM Appendix is appropriate and necessary for virtually all interconnections, primarily because even the relatively detailed language in the agreement concerning network architecture does not (and cannot) address each and every particular of each and every physical interconnection that might be established between two networks. Ameritech Illinois does not exclude the possibility that in rare instances, the meeting contemplated by the disputed language might have a very short agenda and last a very short time. Nonetheless, section 4.2 should be retained in its entirety, especially in light of the fact that the meeting it contemplates has no necessary bearing on the scheduling of the interconnection activation date that is also addressed in section 4.2.

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		<p>let alone in a timely manner. Accordingly, SCC has proposed the language below:</p> <p>Upon receipt of CLEC's notice to interconnect, <del>an</del> the Parties shall schedule a meeting to negotiate a mutually agree on the network architecture (including trunking) to be documented as discussed in Section 2.1. The Interconnection activation date for an Interconnect shall be established based on then existing force and load, the scope and complexity of the requested Interconnection and other relevant factors.</p>	
4. D Joint Facility Growth Planning	Whether SBC should be permitted to turn down interconnection trunks between the Parties when SBC determines such trunks are not being used sufficiently.	<p>SBC should not be permitted to turn down interconnection trunks between the Parties if it determines such trunks are not being used sufficiently. Considering the nature of the services offered by SCC, if SBC prematurely turns down interconnection trunks and, as a result, calls are dropped due to insufficient capacity, the results could be life-threatening. SCC has deleted the language that would allow SBC to unilaterally turn down interconnection trunks as follows:</p> <p>Both Parties will perform a joint validation to ensure current Interconnection facilities and associated trunks have not been over-provisioned. <del>If any facilities and/or associated trunks are over provisioned, they will be turned down where appropriate.</del> Trunk design blocking criteria described in Appendix ITR will be used in determining trunk group sizing requirements and forecasts.</p>	Ameritech Illinois of course recognizes the special importance of 9-1-1 and other emergency traffic, and will certainly not exercise any contract rights in such a way as to create even a remote possibility of the sort of life-threatening situation SCC posits. The fact remains, however, that the inefficient use of interconnection facilities – for any kind of traffic – causes undue strain on the public switched network, and must be avoided to the extent reasonably practicable. Ameritech Illinois' proposed language appropriately allows for the turning down of facilities or spare capacity <i>that is not being used</i> . If there is a small volume of SCC traffic riding such a facility, the traffic would not be dropped, but instead would be moved do a different, in all likelihood smaller, facility so that the spare capacity on the original facility is not stranded but can instead be put to good use.

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		<p>Moreover, SCC's 9-1-1 SafetyNet<sup>SM</sup> services will alleviate any concerns SBC might have regarding inefficient trunk use. SBC's existing CLEC and wireless interconnection agreements require carriers to maintain at least two-trunk groups to each SBC Selective Routing Tandem. SCC's 9-1-1 SafetyNet<sup>SM</sup> services enable CLECs and wireless carriers to terminate emergency call traffic into SCC's network, which aggregates emergency call traffic and transports it to SBC's Selective Routing Tandems. Thus, SCC's 9-1-1 SafetyNet<sup>SM</sup> services reduce the number of trunk groups terminating at SBC's Selective Routing Tandems and allow the remaining trunk groups (those between SCC's POP and SBC's Selective Routing Tandems) to be used more efficiently.</p>	
<p>4. E Pricing of Leased Facilities</p>	<p>Whether SBC should produce prices that it intends to charge SCC for leased facilities, and whether such prices should be reasonable.</p>	<p>SBC should make available the prices it intends to charge SCC for leased interconnection facilities.</p> <p>To date, SBC has not provided SCC with the rates SBC intends to charge for leased interconnection facilities. A sound business plan is contingent upon relative certainty as to the expenditures that will be made for necessary facilities. SCC's ability to negotiate with SBC, and ultimately provide service in SBC's service areas, will be hindered until SBC produces the rates it proposes to charge for leased interconnection facilities.</p> <p>The Act requires that ILECs make interconnection available to CLECs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. SBC must satisfy this requirement in its provision of leased interconnection facilities to SCC.</p>	<p>See Issue 2.B</p>
<p>4. F Bona Fide Request Process</p>	<p>Whether SCC should have to make a Bona Fide Request ("BFR") where necessary</p>	<p>SBC's proposed language requires SCC to make a BFR if necessary facilities are not available. This language is not consistent with the Act or the FCC's</p>	<p>SCC's objection is to section 6.5 of Appendix NIM, which begins, "Any request by either Party for leased facilities where facilities, equipment or riser cable do not exist will be considered and the requested Party may agree to provide under a Bona Fide Request (BFR) Process as defined below, unless otherwise provided out of a</p>

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	facilities and/or equipment are not available.	<p>Local Competition Order. Under applicable legal precedent, SCC should have to make a BFR only when it seeks equipment and/or facilities that fall outside of the FCC's established list of unbundled network elements. Imposing a full-fledged BFR process on CLECs for interconnection facilities that may not be available when requested would violate SBC's duty to be just and reasonable under § 2151(c)(2)(D). SBC is not subject to a BFR process when facilities are not available and imposing such a lengthy, administratively burdensome and costly process on CLECs amounts to providing interconnection to a competitor in a manner <u>less efficient</u> than SBC provides itself. While availability at the time of request may affect SBC's timing in provisioning such facilities, it does not affect the technical feasibility of providing such facilities.</p> <p>SBC's proposed requirement violates the Act and Commission rules. SCC should not be subject to a time-consuming and costly BFR process when requesting equipment or facilities for interconnection. SBC must make such facilities available upon request in the same manner it makes them available to itself. Accordingly, SCC has deleted the objectionable BFR language from SBC's proposed interconnection agreement.</p>	tariff, at the providing Party's sole discretion." SCC's objection misses a fundamental point: If SCC asks to lease facilities, equipment or riser cable that do not exist, Ameritech Illinois has no obligation to provide the facilities, equipment or riser cable to SCC <i>at all</i> . (The law is clear that Ameritech Illinois is not obliged to build facilities that it does not have for the purpose of providing them to a CLEC.) That being so, SCC has no right to arbitrate the conditions under which Ameritech Illinois voluntarily agrees to make such facilities available to SCC.
5. INTERCONNECTION TRUNKING REQUIREMENTS			
5. A Testing of E911 Trunks			It is Ameritech Illinois' understanding that the parties have resolved this issue.
6. UNBUNDLED NETWORK ELEMENTS			

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6. A Obligation to Provide UNE's			It is Ameritech Illinois' expectation that the parties will soon resolve this issue.
6. B Availability of Unbundled Network Elements	Whether SCC's right to access UNEs under §251(c)(3) of the FTA is limited only to the UNE's expressly identified by SBC in its interconnection agreement with SCC.	<p>Section 1.5 of the Agreement should be amended to clarify that SCC has a right of unbundled access to any network element established by the FCC, this Commission, or any other state Commission governing SBC's 13 state operations, regardless of whether those elements are expressly set forth in the SCC/SBC Agreement.</p> <p>SBC has indicated that it has "no obligation to provide access to any network element, or to provide terms and conditions associated with any network element, other than expressly set forth" in its Agreement with SCC. In crafting that language, SBC excluded SCC's language providing the caveat that SCC would be entitled to any unbundled network element established by applicable law. SBC's limitation should be rejected for several reasons: (1) it undermines the authority of this Commission and the FCC to ensure the availability of LINES; (2) it violates the FCC's rules in the SBC/Ameritech Merger Order; (3) it creates an obvious disparity between SBC's treatment of itself and its treatment of SCC; and (4) it is inconsistent with the interconnection negotiation guidelines established by the FCC.</p> <p>First, the UNE Remand Order mandates that competitors are entitled to the national list of unbundled network elements established by the FCC in that Order, or in subsequent FCC decisions modifying that list. In addition, the UNE Remand Order also indicates that competitors are entitled to access additional UNEs established by state commissions. Thus, the FCC clearly contemplates that the list of UNEs could change (and in fact</p>	SCC misinterprets the law and misreads the proposed contract language. If the FCC or a state commission, in accordance with all applicable law, properly defines a new UNE, SCC can access that new UNE under its interconnection agreement either through the BFR process proposed by Ameritech Illinois (Appendix UNE, Section 5 ) or, if applicable, as otherwise permitted by any change of law provisions in the agreement. There is no need to include an open-ended provision in the agreement giving SCC undefined access to all future UNEs. Even if such UNEs were defined, the parties would need to negotiate and determine the precise rates, terms, and conditions under which access would actually be provided. This is how Ameritech Illinois' interconnection agreements have been structured ever since the Act came into being.

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		<p>increase) based on the FCC's or the states' evaluation of the state of competition in the local market. However, SBC's limitation on UNE access effectively invalidate such additions and the FCC's rules, undermining the authority of the FCC and this Commission to ensure competition by adding to the list.</p> <p>Second, the FCC determined in its SBC/Ameritech Merger Order that SBC has an obligation to make available to competitors any UNE that SBC makes available to a requesting carrier in any other SBC jurisdiction pursuant to a negotiated agreement and any UNE that SBC's affiliates secure from an ILEC outside the SBC region pursuant to a negotiated agreement. By limiting SCC only to the UNEs in this Agreement, SBC skirts its obligations under the SBC/Ameritech Merger Order.</p> <p>Third, SBC's attempt to prevent SCC from taking advantage of future changes in the UNE rules of this Commission or the FCC is inconsistent with the FCC's guidelines for negotiating interconnection agreements. SBC's limitation would prevent SCC from availing itself of any newly identified UNEs, as well as any terms and conditions of access established by law, without undertaking the time and cost burden of renegotiating its interconnection agreement. Such an outcome, as the FCC indicated, is not procompetitive: "[W]e find that it is a per se failure to negotiate in good faith for a party to refuse to include in an agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules."</p> <p>Fourth, SBC's limitation is evidence of the disparity between the way SBC treats itself and the manner in which it treats SCC. SBC's language would limit SCC's ability to access newly named UNEs; yet,</p>	

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		SBC has included language in the Agreement that would permit SBC to remove immediately from the Agreement any network element deemed to no longer be a UNE under the “necessary” and “impair” standards of the Act.	
6. C Provisioning and Maintenance of UNE’s (including BFR’s)	Whether SCC must submit a BFR in order to access UNE’s mandated under law when those facilities are not available, or are not addressed in the Agreement or a generic appendix.	<p>The BFR process is not applicable when competitors like SCC seek to access UNEs that SBC is legally obligated to provide, regardless of whether: (1) those UNEs are available at the time of ordering or (2) the UNEs are identified in this Agreement or a generic appendix. The FCC has made clear that the BFR process is not a prerequisite to accessing UNEs under § 251(c) of the Act. “[S]ection 251(c) does not impose any bona fide request requirement.” The FCC has also recognized that the BFR process can impede market entry by competitors. In addition, to the extent that SBC has negotiated in any of its 13 states to provide a UNE without the BFR process, SBC must provide those same UNEs without the BFR process to SCC, pursuant to the requirements of the most favored nation provisions in the SBC/Ameritech Merger Order.</p> <p>Consistent with the FCC’s findings that § 251 does not require BFRs, once an element has been designated a UNE under § 251(c), at no time should the BFR process apply to that element. Thus, SBC cannot require SCC to submit a BFR to access any element designated as a UNE under § 251(c) by the FCC or this Commission, regardless of whether that UNE is available at the time SCC submits the order for that UNE or whether that UNE is identified in this Agreement or a generic appendix. The Agreement should be amended to allow for BFR only when SCC requests a new UNE, or combination of UNEs that SBC does not have an obligation to provide under the rules of the FCC or this Commission.</p>	Unbundling requirements imposed under Section 251(c) are not self-enforcing, but rather must be implemented through specific interconnection agreements. SCC’s proposal ignores that fact by trying to force Ameritech Illinois to provide access to a new UNE the moment it is defined. In practice, however, a new UNE could be provided only after the applicable rates, terms, and conditions for that UNE have been negotiated and determined. This can be done in an efficient, streamlined manner through the BFR process or, if the CLEC chooses that route, by seeking to amend the agreement under any applicable change of law provisions. SCC’s demand for instant access to a newly-defined UNE overlooks the fact that the definition is simply the first step in making access to that UNE a reality. Further, SCC’s proposal to limit the BFR process to requests for UNEs that Ameritech Illinois “does not have an obligation to provide” would render that process largely meaningless.